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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/062,424 | 02/05/2002 | Jorge Cruz-Rios | 0023-0055 | 4124 |

44987 7590 08/11/2005

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EXAMINER

ELMORE, STEPHEN C

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| ART UNIT | PAPER NUMBER |
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2186

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/062,424

Applicant(s)

CRUZ-RIOS ET AL.

Examiner

Stephen Elmore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 and 7 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.


STEPHEN C. ELMORE
PRIMARY EXAMINER

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DETAILED ACTION

1. This Office action responds to the application filed February 5,, 2002.
2. Claims 1-29 are presented for examination.

Specification

3. The disclosure is objected to because of the following informalities:
 - a. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention (novelty) to which the claims are directed. The title is so general it does not identify a any novel feature of the claimed invention, and thus cannot be descriptive of the "invention" as claimed, instead the title clearly describes only prior art technology. See MPEP § 606.01.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1-5 and 8-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite because:
 - a. Claims 1, 8, 11, 18 and 29, the language "maintaining a pool of memory addresses...", "maintain a buffer" and "means for maintaining a pool of memory addresses..." is not clear or definite because in this language it is unstated what specific step or steps make up the activity of maintaining a pool or buffer, this may represent simply the activity of establishing a pool or a buffer, or it may represent something else, the language does not say, therefore the scope of coverage for this limitation cannot be determined;
 - b. Claim 3, line 4, "data" has an antecedent basis problem;
 - c. Claim 8, lines 6 and 7, "data" lacks proper antecedent basis;
 - d. Claim 11, lines 5 and 6, "data" lacks proper antecedent basis;
 - e. Claim 15, line 2, "data" lacks proper antecedent basis;

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- f. Claim 18, lines 9 and 10, "data" lacks proper antecedent basis;
- g. Claim 22, line 2, "data" lacks proper antecedent basis;
- h. Claim 24, line 2, the second use of "data", i.e., after "first data", has an antecedent basis problem;
- i. Claim 25, line 4, the second use of "data", i.e., after "second data", has an antecedent basis problem;
- j. Claims 2-5, 9, 10, 12-17, 19-23, 26-28 inherit deficiencies of the preceding claim.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 24 and 25-28 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific asserted utility or a well established utility.

Claim 24 and Claims 25-28 are not supported by either a specific utility or a well established utility because the first and second data structures encoded on a computer readable medium are merely data structures stored on the medium, within the scope of the claim there are no limitations making functional use of the stored data structures, thus giving them a specific or well established utility, because, the first data structure of a pool of addresses has not been positively read or written to is not used, thus has no utility, and because a second data structure which has as an intended use as a counter value when the pool has been replenished, nevertheless, the pool has not been positively replenished is not used, also has no functional utility, lastly, there is no asserted utility in these claim limitations.

The limitations directed towards: what a pool of addresses are for, what a counter value indicates, what pointers point to, and what flags represent, are merely non-functional descriptive language, because these elements are not actually being used in the claim limitations in any positively recited activities, so they are not used in performing a functional purpose, and their description in the

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claim language is a description of what they are meant to do when used or acted upon, but these elements are passive in these claims.

Note, because the claimed invention is not supported by a specific asserted utility for the reasons set forth above, credibility cannot be assessed.

The claimed invention as a whole must accomplish a practical application, that is it must produce a useful, concrete and tangible result. *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02. MPEP 2106. The claimed invention does not produce a useful or tangible result because the stored data structures are not used within the body of the claim to produce a useful or tangible result. There can be no result when nothing is being done.

Claims 24 and 25-28 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a specific asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Allowable Subject Matter

8. Claims 6 and 7 appear allowable over the prior art of record.
9. Claims 1 and 29 appear to be allowable over the prior art of record if rewritten or amended to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action.

The feature incrementing a counter value in response to each replenishment of the memory addresses in the pool (Claims 1, 6, and 29) is not found in and/or is not obvious in view of the prior art of record, taking this limitation in combination with the remaining limitations of the independent claims.

10. Claims 2-5, 8-10 appear to be allowable over the prior art of record if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Elmore whose telephone number is (571) 272-4436. The examiner can normally be reached on Mon-Fri from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Kim can be reached on (571) 272-4182. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 7, 2005


STEPHEN C. ELMORE
PRIMARY EXAMINER